

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB

PLR-124530-06

Date:

September 12, 2006

TY

### Legend:

Issuer =

State =

Borrower =

City A =

Township A =

Bonds =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

v =

w =

x =

y =

z =

Dear

This is in response to your request for a ruling that the use of the bond proceeds as described below will be an insubstantial deviation for purposes of the public notice and approval requirements set forth in § 147(f) of the Internal Revenue Code (the “Code”) and § 5f.103-2 of the temporary Income Tax Regulations.

#### FACTS AND REPRESENTATIONS:

The Issuer is an instrumentality of the State. The Borrower is a nonprofit corporation organized under the laws of State, and an organization described in § 501(c)(3). The Borrower owns and operates healthcare delivery systems in the State including two separately licensed acute care hospitals located in City A (hereinafter referred to as “Campus A” and “Campus B”) , and an ambulatory care center located in Township A, (hereinafter referred to as “Campus C”).

On Date 1, in compliance with the public notice requirement of §147(f), the Issuer published a public notice (the “Notice”) in newspapers of general circulation covering the State and the localities in which the projects described in such Notice were to be located. The Notice provided the place, date, and time of the public hearing relating to the proposed issuance of the Bonds, which were to be issued as qualified 501(c)(3) Bonds. The Notice also set forth the maximum aggregate principal amount of Bonds and indicated that the proceeds of the Bonds would be used to (i) finance and reimburse the borrower for costs of renovations to facilities at Campus A and Campus B, and (b) pay for construction of an approximately y square foot ambulatory care center at Campus C. Street addresses for Campus A, Campus B and Campus C were also

included in the Notice. On Date 2, the public hearing was duly held and on Date 3 the Governor of the State approved the issuance of the Bonds. On Date 4, the Issuer issued the Bonds.

After TEFRA approval and prior to the issuance of the Bonds, the Borrower determined that a portion of the Project located on Campus C (the "Privately Owned Portion"), could not be financed with the proceeds of the Bonds. It was anticipated at that time that there were sufficient capital costs incidental to the projects described in the Notice at Campus A and Campus B on which the Borrower could expend the proceeds of the Bonds initially intended for the Privately Owned Portion. The ambulatory care center at Campus C, as constructed, measures w square feet of which x square feet were financed with the proceeds of the Bonds and y square feet comprise the Privately Owned Portion.

Subsequent to the issuance of the Bonds, the Borrower entered into a ground lease for a commercial property located in Township A adjacent to Campus C (the "New Property"). The New Property includes a z square foot commercial building (the "New Building"). The New Property has a different address from and is located on a different tax lot from Campus C but is located contiguous to Campus C.

The Borrower would like to use proceeds of the Bonds, originally issued to finance the Privately Owned Portion, to substantially renovate the New Building. After renovation that building will be used to provide services, including enhanced imaging service (CAT Scan and MRI), a center for treatment of sleep disorders, and additional clinical offices, which would improve the level of care at the Borrower's ambulatory care center. Because the New Property is contiguous to Campus C, the Borrower intends to functionally integrate the New Property into Campus C and anticipates that patients of Campus C will routinely move between the buildings on the Campus C and the New Building to receive ambulatory healthcare services. The Borrower expects to incorporate the New Property into Campus C through the use of common parking facilities and signage for both the New Property and Campus C and expects to utilize a single combined address for both Campus C and the New Property, which address would differ from that described in the Notice.

## LAW & ANALYSIS

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond that is not a qualified bond within the meaning of § 141. Section 141(e)(1)(G) provides that the term "qualified bond" means any private activity bond that is a qualified § 501(c)(3) bond.

Section 147(f) provides that a private activity bond is not a qualified bond unless it is part of an issue that has been approved by the governmental unit that issued the

bond or by the governmental unit on whose behalf the bond was issued. Section 147(f)(2)(B) treats an issue as having been approved by a governmental unit if the issue is approved by “the applicable elected representative of the governmental unit after a public hearing following reasonable public notice.”

Section 5f.103-2 provides further guidance on meeting the public notice and approval requirements. Under § 5f.103-2(f)(2), a facility is within the scope of an approval if the notice of public hearing and the approval contain all of the following; (i) a general functional description of the type and use of the facility to be financed; (ii) the maximum aggregate face amount of obligations to be issued with respect to the facility; (iii) the initial owner, operator, or manager of the facility; and (iv) the prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location. The term “facility” as defined in § 5f.103-2(f)(4) includes a tract or adjoining tracts of land, improvements thereon and any personal property used in connection with such real property. Separate tracts of land (including improvements and connected personal property) may be treated as one facility only if they are used in an integrated operation.

An approval is valid under § 5f.103-2(f) for any issue used to provide publicly approved facilities, notwithstanding insubstantial deviations with respect to the maximum aggregate face amount of the bonds issued under the approval for the facility, the name of its initial owner, manager, or operator, or the type or location of the facility from that described in the approval. An approval or notice of public hearing is not adequate if any of the items in § 5f.103-2(f)(2)(i) through (iv), with respect to the facility to be financed, are unknown on the date of the public notice or the date of the approval.

Section 5f.103-2(g)(2) provides that a public hearing is a “forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of bonds and the location and nature of a proposed facility to be financed.” Section 5f.103-2(g)(3) further provides that the public notice must be “reasonably designed to inform residents of the affected governmental units, including residents of the issuing unit and the governmental unit where a facility is to be located, of the proposed issue.” The notice must state the time and date for the hearing and contain the information contained in paragraph § 5f.103-2(f)(2). Notice is presumed to be reasonable, pursuant to § 5f.103-2(g)(3), if it is published no fewer than 14 days before the scheduled hearing.

The purpose of the public notice and approval requirements of § 147(f) is to ensure that the affected members of the general public will be notified of a pending bond issue and made aware of the intended use of proceeds in order to elicit comments that will ensure a substantial public benefit from issuing the bonds. In this case, the New Property is contiguous to Campus C. Moreover the Borrower intends to functionally integrate the New Property into Campus C and anticipates that patients of Campus C would routinely move between the buildings on the existing Campus C and

the New Building to receive ambulatory healthcare services. The Borrower expects to incorporate the New Property into Campus C through the use of common parking facilities and signage for both the New Property and Campus C. The Borrower further expects to utilize a single combined address for both Campus C and the New Property.

Accordingly, the New Property may be treated as part of the facility under § 5f.103-2(f)(4). Although the combined property will exceed the square footage described in the Notice and have a different street address than that published in the Notice, the Notice put the public in the affected area on notice as to the Borrower's intention to use the Bond proceeds to finance facilities for the provisions of ambulatory healthcare services in the vicinity of Campus C and the New Property. Thus, the Notice published originally in newspapers of general circulation covering the State and the affected localities provided the general public in those localities with all of the pertinent information regarding the projects as required by § 147(f) and § 5f.103-2(f).

Conclusion:

Based on the factual representations set forth above, we conclude that the proposed use of the Bond proceeds to substantially rehabilitate the New Building that will be functionally integrated into Campus C constitutes an insubstantial deviation from the project described in the Notice and will not cause the Bonds to fail to meet the public notice and approval requirements of § 147(f) and § 5f.103-2(f).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Powers of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Timothy L. Jones  
Senior Counsel, Tax Exempt Bonds Branch  
(Exempt Organizations/Employment  
Tax/Government Entities)

cc: